

Water Resources Program
Statement of Intent for Pending Application
for a Water Right Permit

*To determine interest and/or option of pursuing an existing new water right
Application in the Yakima Basin (WRIAs 37, 38 and 39)*

**Questions about this form should be directed to the Department of Ecology
Central Regional Office (509) 575-2490**

1. Application Number:

WATER RIGHT APPLICATION NO. (i.e. 1234, G4-01234, etc.)

S4-35206

2. Applicant Information:

APPLICANT/BUSINESS NAME Clinton D. Allen	PHONE NO. 509-962-1614	PHONE NO.
MAILING ADDRESS 6371 Cove Rd		
CITY Ellensburg, WA	STATE WA	ZIP CODE 98426
E-MAIL ADDRESS PDAllen1960@gmail.com		

3. Intent: Check the Appropriate Box: Choose ONLY one box.

- A. **Mitigate** - Providing a mitigation plan may allow Ecology to approve your application.
- ☐ **a. MITIGATE with PLAN:** I/we request that Ecology amend this application to include the attached mitigation plan and process the application at this time. I/we believe my mitigation plan offsets the adverse impacts to the state's water resources that would be caused by the new consumptive use identified in this application. I believe the proposed mitigation plan protects existing water rights by offsetting adverse flow impacts to the Yakima River and/or a more nearby tributary creek.
- ☐ **b. ON-HOLD:** I/we request that Ecology place this application On-Hold, while I/we pursue mitigation. A mitigation plan can be submitted at any time in the future to accompany this application. The application priority date will remain the same as a result of choosing this option.

(Continued on reverse side →)

B. **Process** - Please process my application.

- ☐ a. **PROCESS – NON-CONSUMPTIVE**: I/we request that Ecology process the application at this time. I/we believe the proposed project qualifies as a non-consumptive use. A non-consumptive water use does not diminish the source or impair existing water rights.
- ☐ b. **PROCESS – CONSUMPTIVE, WITHOUT MITIGATION**: I/we request that Ecology process this application in its current state. I/we hereby request that the application be evaluated for approval or denial, which is an appealable action.

C. **Assign** - I/we no longer own the place where water was intended to be used under the permit application.

- ☐ **ASSIGN**: I/we request to assign my/our interest in the permit application to another person. This requires filing of an application assignment form and fee (RCW 90.03.310). To download the assignment form go here:
<http://www.ecy.wa.gov/biblio/ecy040161.html>

If you choose to assign, please also check the appropriate box below.

- ☐ Process the attached assignment form.
☐ Mail me an assignment form.

D. **Withdraw** - Please withdraw my application.

- ☒ **WITHDRAW**: I am/we are no longer interested in pursuing the above application to appropriate public waters of the state. I/we understand that this withdrawal is voluntary and that this application will be removed from the list of pending applications.

4. **Signatures**: Attach additional signatures, if applicable.

I certify that I am the holder or authorized representative of the above water right application.

Clinton D. Allen
Print Name
(Applicant or authorized representative)

Clinton D. Allen
Signature

8-23-13
Date

Patricia L. Allen
Print Name
(Applicant or authorized representative)

Patricia L. Allen
Signature

8-23-13
Date

A Business Reply Envelope is enclosed. Submit the form to:

Department of Ecology
CRO - WR
PO Box 47600
Olympia WA 98599-7600



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

August 15, 2013

Clinton & Patricia Allen
6371 Cove Rd
Ellensburg WA 98926

Re: Water Right Permit Application No. S4-35206

Dear Applicant:

The purpose of this letter is to inform you about options regarding your pending surface water right application No. S4-35206, filed with the Department of Ecology (Ecology) on 7/1/2008, located in the Yakima Basin, specifically Kittitas County. We appreciate your patience with the water right permitting process. As a result of water shortages and legal challenges, water supplies in the Yakima Basin have been at risk and under litigation for years, and Ecology has not been able to issue new water right permits during that time. A comprehensive study has been recently completed that now allows us to move forward in the processing of water rights applications in your area.

The Yakima River Basin Surface Water Adjudication¹ (Adjudication) is entering its 35th year and moving toward completion. The Adjudication and other applicable state and federal Court decisions have clearly determined that water supply in the Yakima River Basin is over appropriated. In other words, the courts have said that more surface water rights have been confirmed in the Adjudication than there is water legally available to appropriate. This condition is more severe during low water years, when the basic tenet of Western Water Law is relevant – first in time, first in right. Those with surface water rights in the Yakima Basin with priority dates after May 10, 1905, have frequently been limited or curtailed during low water years.² The purpose of curtailment is to protect access to water for senior water right holders.

In September 2011, the United States Geological Survey (USGS) released the final report on the Yakima Basin Groundwater Study.³ This 12-year study confirmed that groundwater and surface water are directly connected in the Yakima Basin.

¹ *State of Washington, Department of Ecology v. James J. Acquavella, et al.*, Yakima Superior Court Cause No. 77-2-01484-5. <http://www.ecy.wa.gov/programs/wr/rights/adjhome.html>

² The following years represent low water years since the Adjudication began in 1977; 1977, 1992, 1993, 1994, 2001, and 2005. These years are good indicators as to the frequency of junior surface water right holders having limited water supply or being curtailed in the recent past.

³ "Numerical Simulation of Groundwater Flow for the Yakima River Basin Aquifer System, Washington," D.M. Ely, M.P. Bachmann and J.J. Vaccaro. USGS Scientific Investigations Report 2011-5155. <http://pubs.usgs.gov/sir/2011/5155/>

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The study also demonstrates that pumping groundwater wells in Kittitas County reduces streamflow and would add to the existing water deficit in the Yakima Basin.

Therefore, Ecology anticipates that it will be unable to approve any pending applications for new surface water or groundwater rights in this county unless an applicant is able to mitigate for the expected impact of the new water use. This is because a formal permit decision would likely conclude that under state law: 1) water is not available for new appropriation, 2) a new appropriation would impair existing water rights, and 3) a new appropriation would not be in the public interest. (RCW 90.03.290)

The good news is the Yakima Basin Integrated Water Resources Management Plan⁴ (Integrated Plan) is working to fill the Basin's existing deficit and may even provide some additional water supplies in the basin for future uses. Unfortunately, the Integrated Plan is a long-term solution and is not the short-term answer.

Based on our review of your application, we have determined that your water right application is junior to the critical date of May 10, 1905, and will likely have an impact on surface water in the Yakima Basin unless mitigated. Therefore, we ask that you consider, and subsequently choose one of the following options regarding your pending water right application on the enclosed Statement of Intent form.

Application Processing Options

- A. **Mitigate⁵** - In the case of your application, providing a mitigation plan that protects existing water rights by offsetting the flow impacts to the Yakima River and/or nearby tributary creeks may allow Ecology to approve your application that otherwise would likely be denied because it does not meet the legal requirements of water availability, impairment, or public interest. A mitigation plan should describe the effects of your proposed water use and present a proposal to alleviate those effects.
- a. **Mitigate with Plan.** By selecting this option, you choose to include a mitigation plan to support processing your application. The mitigation plan must offset the adverse impacts to the state's water resources that would be caused by the new consumptive use identified in your application, and must protect existing water rights by offsetting adverse flow impacts to either the Yakima River and/or a more nearby tributary creek.
 - b. **On-hold.** By selecting this option, you choose to place your application On-Hold, while you pursue mitigation. A mitigation plan can be submitted at any time in the future to accompany your application. You will not lose the priority date of your application as a result of selecting this option.

⁴ The Integrated Plan identifies a comprehensive approach to develop water resources and ecosystem restoration improvements to address a variety of problems affecting fish passage, fish habitat, and water supplies for agriculture, municipalities, and domestic uses. <http://www.ecy.wa.gov/programs/wr/cwp/YBIP.html>

⁵ "Mitigation" means measures that offset adverse effects on a water source to eliminate impairment to existing water rights and/or detriment to the public interest. See FAQ enclosure for more details.

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- B. **Process** - You may request that your application continue to be processed to a formal decision without providing or seeking mitigation.
- a. **Process – Non-Consumptive.** By selecting this option, you request that your application be processed at this time because your project qualifies as a non-consumptive⁶ use. A non-consumptive water use does not diminish the water source or impair existing water rights.
 - b. **Process – Consumptive, Without Mitigation.** By selecting this option, you request that your application be processed in its current state, though an approval is unlikely. Groundwater and surface water are not available for further consumptive appropriation in the subbasin where your application is pending. Exercising this option requires Ecology to make a formal decision on your application that is appealable pursuant to RCW 43.21B.310.
- C. **Assign** – If you are no longer the current owner of the place where the permit application was intended to be used, selecting this option requests that your interest in the permit application be assigned to another person. This requires an assignment form and fee be filed with Ecology for the application (RCW 90.03.310). Assignment forms are available at <http://www.ecy.wa.gov/biblio/ecy040161.html>.
- D. **Withdraw** - If you are no longer interested in pursuing your application to appropriate public waters of the state, selecting this option will withdraw your application and remove it from the list of pending applications. Withdrawal is voluntary.

This letter and the enclosed Statement of Intent Form have been sent to determine the next steps regarding No. S4-35206. This letter is not an Administrative Order issued by Ecology pursuant to RCW 43.27A.190, nor is issuance of this letter an appealable action pursuant to RCW 43.21B.310.

Please reply within ninety (90) days of the date of this letter by choosing one option on the enclosed Statement of Intent Form and mailing it back to Ecology using the enclosed postage-paid envelope.

If you do not respond within ninety (90) days of the date of this letter or do not return the enclosed form, Ecology will process the application in its current state. An approval is unlikely; a formal decision is likely to result in a denial of the application based on groundwater and surface water not being available for further consumptive appropriation in the subbasin where your application is pending. A formal decision will result in an appealable action pursuant to RCW 43.21B.310.

⁶ Water Resources Program Policy 1020 – Consumptive and Nonconsumptive water use.
http://www.ecy.wa.gov/programs/wr/rules/pol_pro.html

If you have any questions or need additional assistance, we have several staff available to help.

Please contact:

Teresa Mitchell at teresa.mitchell@ecy.wa.gov or 509-575-2597 or
Sage Park at sage.park@ecy.wa.gov or 509-454-7647

Sincerely,



Mark Kemner, LHG
Section Manager
Water Resources Program

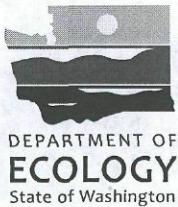
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Enclosure: *Statement of Intent Form for Pending Application for a Water Right Permit in the Yakima Basin (plus postage-paid envelope for returning the form)
Focus on mitigation in the Yakima Basin. publication no. 12-11-024*

By certified mail: 7007 2560 0001 9535 6572

U.S. Postal ServiceTM CERTIFIED MAILTM RECEIPT <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>		OFFICIAL USE For delivery information visit our website at www.usps.com	
Postage \$		Postmark Here	8-15-13
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
To: Clinton & Patricia Allen 6371 Cove Rd Ellensburg WA 98926 S or WR/gh S4-35206 KRO			
PS Form 3811, August 2004			

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
1. Article Addressed to: Clinton & Patricia Allen 6371 Cove Rd Ellensburg WA 98926 WR/gh S4-35206 KRO		A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee B. Received by (Printed Name) <i>Pat Allen</i> C. Date of Delivery <i>8/16/13</i> D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:	
2. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		102595-02-M-1540	



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CITY	STATE	ZIP CODE
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(Applicant or authorized representative)

Signature

Date

Print Name
(Applicant or authorized representative)

Signature

Date

A Business Reply Envelope is enclosed. Submit the form to:

Department of Ecology
CRO - WR
PO Box 47600
Olympia WA 98599-7600